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10/780,846	02/18/2004	Shaun Thomas Broering	9527L	2517

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EXAMINER	
WARD, JESSICA LEE	

ART UNIT	PAPER NUMBER
1733	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/780,846	BROERING ET AL.	
	Examiner	Art Unit	
	Jessica L. Ward	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

FINAL ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 3, 12, 14-16 and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bustin (GB 1301198, previously cited).

With respect to claim 1, Bustin teaches a method of making an article (flexible bag) having elastic-like behavior by introducing a sheet material 10 having at least one overlapped portion, forming said overlapped portion of sheet material into a strainable network including a plurality of first regions and a plurality of second regions, said first regions being substantially un-deformed and said second regions being formed into disengageable pleat elements (sheet passes between embossing rollers 25, 26 to form deformations/pleats), and disengaging said pleat elements using a disengaging means (introduces air between overlapped portion of sheet to disengage pleat elements). See Figures 1-6, p. 1 lines 11-18, p. 2 lines 5-15 and 115-117, p. 3 lines 10-40.

The examiner would like to point out that an article of the present invention has 'elastic-like behavior' because of the presence of the strainable network (see present specification at section [0022] on p. 11). The strainable network, which comprises a plurality of deformations formed in the plastic sheet material (i.e. polyethylene), is formed by feeding the sheet material through a nip formed by a toothed roll and an opposing grooved roll (see present specification at sections [0019-0020]). Furthermore, the present specification incorporates commonly owned US PAT 6,394,652 by reference for it's

teaching of a sheet material having a strainable network that can be used with the present invention (see present specification at section [0024]) - it being noted that the '652 PAT forms the deformations of the strainable network by passing the sheet material through a nip formed by embossing rolls (see '652 PAT at column 2, lines 39-43 and column 3, lines 50-56 and column 4, lines 57-59).

Therefore, since Bustin forms a plurality of deformations in his plastic sheet material (i.e. polyethylene) by passing the same through a nip formed by a toothed embossing roll and an opposing grooved roll (p. 4, lines 25-31), one would readily appreciate that the deformations of Bustin form a 'strainable network' in the sheet material and that this strainable network would impart 'elastic-like behavior' to the article.

Regarding claim 3, Bustin teaches overlapping one portion of sheet material over another portion of sheet material (Figure 6).

Regarding claim 12, Bustin teaches winding the sheet of material onto a roll (Figure 6; p. 3 lines 38-39).

Regarding claim 14, Bustin teaches unwinding a continuous web of sheet material from a roll (Figure 5; p. 3 lines 127-130).

Regarding claim 15, Bustin teaches such (Figure 6; p. 3 lines 10-13).

Regarding claim 16, Bustin teaches forming flexible bags from the sheet material (Figure5; p. 1 lines 15-18).

Regarding claim 18, Bustin teaches such (p. 3 lines 35-38 and 125-126).

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 2, 4, 10 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bustin as applied to claim 1 above and further in view of Cronauer (US 5709069, previously cited).

Regarding claim 2, Bustin teaches disengaging the pleat elements by inflation (p. 3 lines 30- 33) but it is unclear as to how Bustin introduces the air between the pleats. It would have been obvious to use an air knife to introduce the air because such is used in the art to deliver air, which separates the front and back walls of a flexible bag to thereby open the same, as by Cronauer (column 1, lines 14-15; column 2, lines 54-57; column 5, lines 6-9).

Regarding claim 4, Bustin teaches such.

Regarding claim 10, Bustin teaches forming the pleats using embossing rollers 25, 26 (p. 3 lines 71-93).

Regarding claim 20, all the limitations were addressed with respect to claims 1 and 2.

7. Claims 2, 4-9, 10-11, 17 and 19-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bustin as applied to claim 1 above and further in view of Rowe et al. (US 2615375, previously cited), or LaFleur et al. (US 4481006, previously cited), or Yisha et al. (US 5956929, previously cited), or the collective teachings of and Hiramoto et al. (US 6446684, previously cited) and Henaux (US 5845463, previously cited) and Adelmann (US 5564252, previously cited) and Muller (US 5279095, previously cited).

Regarding claims 2, 5-9 and 11, one or ordinary skill in the art reading Bustin as a whole would have readily appreciated that the reference is not concerned with a particular method/device for disengaging the pleats. Therefore, it would have been obvious to one of ordinary skill in the art to use other methods/devices, such as those being claimed by Applicant, as an alternative to inflation since such alternatives are well known in the flexible bag art and only the expected results would have been achieved – Rowe teaches making flexible bag where pleats formed in bag and then pleats separated by variety of methods/devices including inflation (Figure 1; column 3, lines 35-36), a static opening bar (Figure 5; column 4, lines 30-34), and a dynamic opening bar (Figures 9-13 and 16; column 4, lines 60-75; column 5, lines 43-47 and 55-67); LaFleur teaches opening a flexible bag using a dynamic opening bar (Figure 1; column 1, lines 4-12; column 2, line 48 – column 3, line 3); Yisha teaches opening a flexible bag using a stationary opening bar (Figures 1-2; abstract; column 2, lines 48-65); collective teachings of Hiramoto (column 1, lines 8-15; column 3, lines 39-43), Henaux (Figure 1; column 2, lines 22-24), Adelmann (column 5, lines 50-65) and Muller (abstract; column 1, lines 14-16; column 2, lines 6-40; column 3, lines 38-42) teach opening a flexible bag using suction/vacuum.

Regarding claim 17, Bustin teaches sealing at least one edge of the flexible bag (p. 3 lines 35-36). It would have been obvious to sever the sheet material across a width of the sealed edge to separate the sheet material into individual flexible bags because such is known in the art, as taught by Yisha (column 4, lines 34-40; column 5, lines 40-45).

Regarding claim 19, it would have been obvious to interleave the severed (claim 17) or perforated (claim 18) bags of Bustin because such is well known and conventional in the flexible bag art when storing/shipping the bags.

Regarding claims 4, 10 and 20, please see paragraph 4 above.

8. Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bustin as applied to claim 1 above, and further in view of Meyer et al. (US 6394652, previously cited).

Regarding claim 13, it would have been obvious to incorporate a closure means into the sheet material of Bustin because such is known in the flexible bag making art, as taught by Meyer (column 2, lines 32-35; column 11, lines 28-38).

9. Claims 1, 3, 12-16 and 18-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al. (US 6394652, previously cited) in view of Bustin, or alternatively, Bustin in view of Meyer et al.

*Note that Meyer has a common assignee with the present invention but is available as prior art under 102(b); therefore, statutory bar applies.

With respect to claim 1, Meyer teaches a method of making an article (flexible bag) having elastic-like behavior (column 2, lines 49-55; column 3, lines 50-56) by introducing a sheet material (i.e. polyethylene; column 11, line 2) having at least one overlapped portion (column 2, lines 16-29; column 9, lines 6-9) and forming said overlapped portion of sheet material into a strainable network including a plurality of first regions 50 and a plurality of second regions 40, said first regions being substantially un-deformed and said second regions being formed into pleat elements (Figure 1; column 2, lines 39-43; column 3, lines 50-56).

Since Meyer forms his strainable network of un-deformed regions and pleat elements by passing the sheet between embossing rollers while the sheet is folded/overlapped (column 4, lines 57-65; column 2, lines 17-29; column 9, lines 6-9), one would readily appreciate that one layer will engage with the other layer in the areas where the pleat elements are formed (see

section [0003] of Admitted Prior Art in present specification). However, it is unclear as to whether the reference teaches disengaging the pleat elements using a disengaging means.

It is known in the flexible bag art to introduce a sheet material having at least one overlapped portion, form said overlapped portion of sheet material into a network including a plurality of un-deformed regions and disengageable pleat elements by passing the sheet between embossing rollers, and then disengage the pleat elements using a disengaging means, as taught by Bustin (Figures 1-6, p. 1 lines 11-18, p. 2 lines 5-15 and 115-117, p. 3 lines 10-40).

Therefore, it would have been obvious to one of ordinary skill in the art to disengage the pleat elements of Meyer using a disengaging means because such is known in the flexible bag art, as taught by Bustin, where this allows for separation of the walls of the flexible bag thereby creating the open space needed to hold contents within the bag.

Alternatively, with respect to claim 1, and if it is not taken that Bustin teaches the pleat elements forming a strainable network and the flexible bag having elastic-like behavior, it would have been obvious to one of ordinary skill in the art to carry out the embossing of Bustin such that the un-deformed regions and disengageable pleat elements form a strainable network that imparts elastic-like behavior to the flexible bag because such is known in the art, as taught by Meyer, where elastic-like behavior allows the bag to expand in response to forces exerted by contents within the bag to provide an increase in volume so that the bag can accommodate the contents placed therein (Meyer; column 1, lines 48-50; column 3, lines 50-55; column 3, lines 50-56).

Regarding claim 3, Meyer teaches this (column 2, lines 16-30; column 9, lines 5-9). Regarding claim 12, Meyer teaches this (Figure 3). Regarding claim 13, Meyer teaches this

(column 11, lines 28-38). Regarding claim 14, Meyer in view of Bustin teaches this (Bustin at p. 3, lines 12-130). Regarding claim 15, Meyer in view of Bustin teaches this (Bustin at p. 3, lines 10-13). Regarding claim 16, Meyer teaches this. Regarding claim 18, Meyer in view of Bustin teaches this (Bustin at p. 3, lines 35-38 and 125-126). Regarding claim 19, it would have been obvious to interleave the bags of Meyer because such is well known and conventional in the flexible bag art when storing/shipping the bags.

10. Claims 2, 4, 10 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al. and Bustin, or alternatively, Bustin and Meyer et al. as applied to claim 1 above and further in view of Cronauer.

See above.

11. Claims 2, 4-9, 10-11, 17 and 19-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al. and Bustin, or alternatively, Bustin and Meyer et al. as applied to claim 1 above and further in view of Rowe et al., or LaFleur et al., or Yisha et al., or the collective teachings of Hiramoto et al. and Henaux and Adelmann and Muller.

See above.

Response to Arguments

12. Applicant's arguments filed 3/5/07 have been fully considered but they are not persuasive.

13. Applicant argues that Bustin does not expressly teach that the plastic film is elastic-like or that it comprises a strainable network. Applicant argues that Bustin discloses a number of variables present in the embossing process and to support the anticipation rejection, the Office Action takes the position that regardless of any changes to any of the variables, and in all

possible combinations of variables, the embossed film will necessarily possess a strainable network and will exhibit elastic-like behavior. Applicant therefore argues that embossed plastic films as taught by Bustin are not inherently elastic-like and do not inherently possess strainable networks.

The examiner would like to point out that the present invention does not disclose and/or claim any specific embossing variables, or combination of variables, that results in a plastic film that is elastic-like or that comprises a strainable network. Therefore, as stated in paragraph 4 above, since Bustin, like the present invention, forms a plurality of deformations in his plastic sheet material (i.e. polyethylene) by passing the same through a nip formed by a toothed embossing roll and an opposing grooved roll (p. 4, lines 25-31), one would readily appreciate that the deformations of Bustin would also form a 'strainable network' in the sheet material and that this strainable network would impart 'elastic-like behavior' to the article.

It appears that Applicant's arguments are based on statements regarding unexpected results. If so, the examiner reminds Applicant that the arguments of counsel cannot take the place of evidence in the record and any statements regarding unexpected results must be supported by an appropriate affidavit or declaration (See MPEP 2145, section I and MPEP 716.01(c), section II).

14. Applicant argues that the present invention claims a step of separating pleated portions of an overlapped sheet material while Bustin teaches a method for separating portions of an embossed tube of material, not an overlapped sheet of material.

One would readily appreciate that a tube of material, especially when flattened, is a sheet of material that has at least one overlapped portion. In fact, Applicant refers to a flattened tube

as a sheet of material having at least one overlapped portion (p. 7, section [0014]). Therefore, the flattened tube of Bustin clearly reads on Applicant's claimed "sheet of material having at least one overlapped portion."

15. Applicant argues that both Meyer and Bustin are silent as to separating multiple sheets of formed material.

The Examiner points out that this argument is not commensurate with the scope of the claimed invention.

16. Applicant argues that Bustin teaches an inflation method for opening a tube of material after an embossing process and nothing in the reference teaches or suggests that such an inflation step is applicable to an overlapped sheet material.

Once again, the Examiner points out that a tube of material, especially when flattened, is a sheet of material that has at least one overlapped portion. In fact, Applicant refers to a flattened tube as a sheet of material having at least one overlapped portion (p. 7, section [0014]). Therefore, the flattened tube of Bustin clearly reads on Applicant's claimed "sheet of material having at least one overlapped portion."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Ward whose telephone number is 571-272-1223. The examiner can normally be reached on Mon-Fri between 9AM and 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica L. Ward
Primary Examiner
Art Unit 1733